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January 8, 2016

VIA ECF

The Honorable Charles R. Breyer
United States District Judge
United States District Court- Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC)

Dear Judge Breyer:

Pursuant to Pretrial Orders, Nos. 1 and 2 (ECFs Nos. 2 and 336), Dan Gustafson of Gustafson Gluek PLLC applies for appointment to the Plaintiffs’ Steering Committee (“PSC”). My firm filed actions on behalf of owners of Volkswagen and Audi “Clean Diesel” Vehicles in *Bliss v. Volkswagen AG et al.*, 2:15-cv-13573 (E.D. Mich.) and *Niegelsen v. Volkswagen AG et al.*, 2:15-cv-13714 (E.D. Mich.).

(1) Professional Experience

I am the senior partner and founding member of Gustafson Gluek which for many years has advocated for injured consumers and businesses in antitrust, consumer protection and product defect cases. We have a long history of leading major class actions and have been involved in numerous plaintiff executive or steering committees. I was selected as one of *Minnesota Lawyer’s* Attorneys of the Year for 2010 and 2013 and a Top 100 MN “Super Lawyer” in 2012 – 2015. I have testified before Congress on mergers and other antitrust issues, authored chapters in litigation handbooks, and am an adjunct professor at the University of Minnesota Law School.

My partner Dan Hedlund has zealously advocated for injured class members since he began practicing in 1998. He was ranked a Top 100 Minnesota “Super Lawyer” in 2014 and 2015. Recently, he was selected by Global Competition Review as being among the world’s leading competition plaintiff lawyers.

My representative experience includes major antitrust and product liability class actions, as well as a landmark civil rights victory:

- *In re DRAM Antitrust Litig.*, MDL No. 1486 (N.D. Cal. and multiple state court actions) (co-lead counsel for indirect purchasers achieving \$310 million in settlements).
- *Precision Associates v. Panalpina (“Precision”)*, No. 08-CV-42 JG VVP (E.D.N.Y.) (co-lead counsel in price-fixing class action against freight forwarders in shipping industry; obtained over \$350 in preliminarily and finally approved settlements to date).

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- *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 07-1827 (N.D. Cal.) (significant role in obtaining \$1.2 billion for indirect purchaser plaintiffs; Gustafson Gluek alone spent over 19,000 hours on behalf of the indirect purchaser class).
- *In Re: Medtronic, Inc., Sprint Fidelis Leads Products Liability Litig.*, MDL No. 1905 (D. Minn.) (as sole lead counsel, negotiated \$268 million settlement on behalf of over 14,000 individual plaintiffs).
- *In Re Medtronic, Inc. Implantable Defibrillators Products Liability Litig.*, MDL No. 1726 (D. Minn.) (co-lead counsel recovering nearly \$100 million on behalf of plaintiffs).
- *Karsjens v. Jesson ("MSOP")*, No. CIV. 11-3659 (D. Minn.) (obtained order declaring Minnesota Sex Offender Program unconstitutional after six-week bench trial).
- *In re Syngenta Litig.*, No: 27-CV-15-3785 (Minn. Dist. Ct.) (co-lead counsel in state court action representing classes of farmers and businesses against Syngenta for release of unapproved GMO corn in key export markets, lowering the US corn prices).

Given that Defendants have largely admitted their wrongdoing, the pivotal issue may be the prompt and fair compensation of class members. Recently, Gustafson Gluek, alongside co-counsel Cotchett Pitre McCarthy and others, were recently recognized by Judge Gleeson for high-value settlements to class members:

Class Counsel are highly experienced practitioners in complex litigation generally and antitrust litigation specifically. The settlement agreements [are] the result of hard fought arms'-length negotiation with settlement defendants' respective counsel. The settlement amounts proposed here attest to Class Counsel's abilities.

Precision, 2015 WL 6964973, at *8 (E.D.N.Y. Nov. 10, 2015) (internal quotations omitted).

In addition to a willingness to fight for fair compensation, this case requires counsel with experience developing a methodology to allocate funds to class members with varied levels of injury. Gustafson Gluek developed the process in the *Medtronic Sprint Fidelis Leads* litigation to allocate and administer a significant settlement award to over 14,000 individuals whose injuries varied from wrongful death to emotional distress. Dan Gustafson was also appointed as lead settlement counsel in *Dwyer v. Nat'l Football League ("NFL")*, No. 9-cv-02182, ECF No. 250 (D. Minn.) related to former NFL players' publicity rights, when settlement talks had stalled "in part due to disagreements that [had] arisen among Plaintiffs three lead counsel." Mr. Gustafson was able to reach a fair settlement with the NFL, which was upheld by the Eighth Circuit. *Marshall v. Nat'l Football League*, 787 F.3d 502 (8th Cir. 2015).

(2) Judges and Mediators as References

Hon. Donovan W. Frank (D. Minn.) 651-848-1290, and Hon. Magistrate Jeffrey Keyes (D. Minn.) 651-848-1180, for *MSOP*

Hon. James Loken (8th Cir.) 612-664-5810, for *Medtronic Sprint Fidelis Leads*

Hon. James Rosenbaum (ret.) (D. Minn.) 612-332-8225, for *Medtronic Implant. Defibrillators*

Hon. Paul Magnuson (D. Minn.) 651-848-1150, and Hon. Magistrate Arthur Boylan (ret.) (D. Minn.) (612) 206-3730 for *NFL*

Hon. Michael Davis (D. Minn.) 612-664-5070, for *Pro Se Project* (see below)

Hon. Daniel Weinstein (ret.), 415-982-5267 as mediator in *DRAM*

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Hon. Layn Phillips (ret.), (949) 760-5280 as mediator in *Trabakoolas v. Watts Water Techs., Inc.*, No. 12-cv-01172 (N.D. Cal.) (\$23 million settlement reached for alleged failures of toilet connectors) and *Cason-Merenda et al. v. VHS Michigan, Inc.*, No. 06-15601 (E.D. Mich.) (\$90 million in settlements reached on behalf of nurses in antitrust case).

(3)-(7) Commitment to Litigation

I seek appointment to the PSC on behalf of all plaintiffs. Along with Dan Hedlund and Josh Rissman, I am willing to immediately devote significant time and the full financial resources of my firm, which is accustomed to funding long-term complex litigation.

Gustafson Gluek has worked collegially and efficiently with many of the other lawyers and firms likely to file for leadership to achieve extraordinary results for class members, and will continue to do so in this important case. Many of these firms support Gustafson Gluek's appointment to the PSC, which is attached as Exhibit B. Gustafson Gluek is also committed to working with defense counsel to efficiently litigate and resolve the case. As evidence, in *Precision* we reached settlements with twenty-eight defendant corporate groups after hard fought litigation. Once we agreed to settle, we engaged in arms-length but cooperative negotiations with twenty-eight different sets of defense counsel.

(8) Other Considerations

Outside of my success litigating and resolving complex cases, appointment to the Plaintiff Steering Committee would ensure geographic diversity among Plaintiffs' counsel. While California has the most class members, Minnesota and other Midwestern states have thousands of class members. In this highly public case, it will be important that Plaintiffs from different parts of the country believe their best interests are being represented.

Lastly, an important consideration in choosing a firm to prosecute this important case is its commitment to public service. In addition to the *MSOP* civil rights victory, Gustafson Gluek was one of four firms to create the Minnesota *Pro Se* project, pairing indigent federal litigants with attorneys. Former Chief Judge Michael Davis of the District of Minnesota awarded Gustafson Gluek a "Distinguished Pro Bono Service Award,"

. . . for rising to the Court's challenge of bringing the idea of the *Pro Se* Project to fruition and nurturing the Project into its current form. Their vision, dedication, perseverance, and tireless effort made the *Pro Se* Project—the first of its kind in Federal Courts across the Nation—what it is today.

available at <http://www.fedbar.org/Chapters/Minnesota-Chapter/Newsletters.aspx>.

Respectfully submitted,

GUSTAFSON GLUEK PLLC



Daniel E. Gustafson